representing himself as Eng Ah Suan by using Eng Ah Suan's N.R.I.C. In my view, the explanation given by the accused is more reasonable. According to him, in the latter part of September 1977, Eng Ah Suan approached him and told him that he wanted to rent a place. Both of them met Wong Kim Fah; and after inspecting the premises, Eng Ah Suan agreed to rent the place. When Eng Ah Suan took out his N.R.I.C., the accused took it and passed it to Wong. I am therefore satisfied that it was Eng Ah Suan and not the accused who rented the premises from Wong.

As regards the fact that there was only one bed in the whole premises, and the fact that the accused kept his clothing in one of the rooms in the premises, I am of the view that such evidence are insufficient to prove that the accused was in control of the incriminating exhibits. In fact, from the evidence of Sgt. Saaban, he found about six or seven persons sleeping on the floor in the hall on December 21. Thus, the mere fact that there was only one bed in the premises is neither here nor there as far as the question of control or possession is concerned. Similarly, the fact that the accused had his clothing in one of the rooms and the fact that he had signed the search list cannot clothe him with having the control of the premises and exhibits.

On the surrounding circumstances of this case and on balance of probabilities in the evidence, I accept the defence contention that the Police had staged a scene on December 28, 1977 after they had knowledge of the existence of the incriminating exhibits at the premises. During the ten days' interrogation, Inspector Wong managed to 'break' the accused and persuaded him to give the information leading to the alleged 'discovery' when, in fact, the incriminating exhibits had already been recovered by the police at the premises. As such, the provision of section 27 cannot apply, as the discovery cannot be said to be the result of the information given.

Without the assistance of section 27 of the Evidence Act, I find the remaining prosecution evidence, which are entirely circumstantial, are insufficient to prove that the accused was in control of the incriminating exhibits at the material time.

Having regard to all the evidence in this case, I find the defence has raised more than a reasonable doubt in the prosecution case. And on the authority of Federal Court in *Public Prosecutor* v. *Sihabduin bin Haji Salleh & Anor.*[3] on the interpretation of regulation 17 of the Essential (Security Cases) Regulations 1975, I find the accused not guilty. He is acquitted and discharged.

Accused acquitted and discharged.

Solicitors: *Ngeow & Co.*

ONG YOKE ENG & ANOR. v. LIM AH YEW

[O.C.J. (Arulanandom J.) April 24, August 4, 1975; July 7, October 6, November 4, 5, 1980; January 27, June 29, July 6, 20 and September 9, 1981]

[Penang — Civil Suit No. 424 of 1974]

Practice and Procedure — Recall of witness after case is closed in civil proceedings — Court's discretion.

At the commencement of the trial in a running down case the defendant admitted liability and the trial proceeded solely on the matter of quantum. The plaintiff concluded her case and submissions were made both by the defendant's counsel and plaintiff's counsel after which the matter was adjourned to a date to be fixed. Subsequently on May 6, 1981 the plaintiff by a notice of motion applied to court for the plaintiff to be allowed to re-open her case and give further evidence and also to call a witness who is her coffee-shop assistant. The defendant's counsel objected to the application.

Held, allowing the plaintiff's application:- (1) in civil proceedings, it is in the discretion of the court of first instance to recall a witness or call further witnesses after his case is closed; although under ordinary circumstances it may not be necessary or permissible to allow a witness once examined and dismissed by a party to be recalled for it is expected that the advocate will interrogate him on all material points touching his case, unforeseen situations may develop and there may be also inadvertent omissions;

(2) the court may at its discretion allow a witness to be recalled, but surprise or prejudice to the other party should be guarded against;

(3) in the present case the defendant's objection was not on the above anticipated grounds. Nevertheless, on allowing the application, the court granted liberty to be defendant to cross-examine the recalled witness and further witnesses and call evidence in rebuttal.

CIVIL SUIT.

Triptipal Singh for the plaintiff.

Lim Ewe Hock for the defendants.

Cur. Adv. Vult.

Arulanandom J.: This was a running down case where at the commencement of the trial the defendant admitted liability and the trial proceeded solely on the matter of quantum.

The plaintiff concluded her case and submissions were made both by defendant's counsel and plaintiff's counsel after which the matter was adjourned to a date to be fixed.

Subsequently on May 6, 1981 the plaintiff by a notice of motion applied to court for the plaintiff to be allowed to reopen her case and give further evidence and also to call a witness who is her coffee shop assistant.

Her reasons for making this application were given in her affidavit affirmed on May 5, 1981.

In her affidavit she says *inter alia*: —

"3. On the 5th day of November 1980 I gave evidence before the Honourable Court to the effect *inter alia* that my late husband ran a coffee stall and gave me about $300 per month for upkeep and maintenance of the family. I also said that I helped my deceased husband in the business full time. After his death I carried on the said business and I employ (sic) an assistant.

4. At the time of giving evidence I omitted to state how much I was paying my assistant who was helping me in the coffee stall.

5. I say that this part of the evidence is vital in order to

assist the court to calculate the damages properly and reasonably and I pray for an order in terms of my Motion herein."

Defendant's counsel by his affidavit affirmed on July 9, 1981 objected to the application and his grounds are stated as follows: —

"3. It is not true that the said Ong Yoke Eng employed an assistant to carry on the business of the coffee stall after the death of Chuan Im Tit @ Chuan Joon Ting deceased.

4. The business was carried on by Ong Yoke Eng, the widow and her own two children, were assisting her.

5. Both of the children are in their early twenties, one is a male and the other a female.

6. I am advised and verily believe that if the said Ong Yoke Eng had an assistant she should have said so in her evidence on the November 5, 1980 and called the assistant to give evidence."

It is an objection on a question of fact. Looking at the notes of evidence in this case, the plaintiff in cross-examination stated as follows: —

"...I need someone to help. I helped my deceased husband in the business. Since he died it is carried on by myself and my daughter and I employ the assistant. I earn about $40 — $50 per day (gross). Net profit is $20 per day...."

The defendant's objection is therefore devoid of all merit as the plaintiff has said she employed an assistant.

In civil proceedings, it is in the discretion of the court of first instance to recall a witness or call further witnesses after his case is closed. Although under ordinary circumstances it may not be necessary or permissible to allow a witness once examined and dismissed by a party to be recalled for it is expected that the advocate will interrogate him on all material points touching his case, unforeseen situations may develop and there may be also inadvertent omissions. In such a case the court may at its discretion allow a witness to be recalled, but surprise or prejudice to the other party should be guarded against. The objection by the defendant to the application was however not on these anticipated grounds. Nevertheless on allowing the application the court granted liberty to the defendant to cross-examine the recalled witness and further witnesses and call evidence in rebuttal.

Application allowed with costs.

Order accordingly.

Solicitors: *Triptipal Singh; Lim Ewe Hock.*

MANICKAM & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Wong Kim Fatt J.C.) December 1, 1981]

[Seremban — Criminal Application No. 4 of 1981]

Criminal Law and Procedure — Accused charged with gang-robbery — Application for bail refused by Sessions Court — Whether Sessions Court has power to grant bail — Imprisonment for term extending to twenty years — Imprisonment for life — Amendment of Penal Code, s. 395 — Interpretation.

Criminal Law and Procedure — Bail — Discretion of High Court to grant bail — Circumstances under which bail should be granted — Amount of bail bond — Criminal Procedure Code (Cap. 6), ss. 388 & 389.

Jurisdiction — Sessions Court — Bail application — Whether Sessions Court has power to hear.

The five accused, applicants in these proceedings, were charged in the Sessions Court, Seremban, with gang-robbery under section 395 of the Penal Code. Their application for bail was refused by the President of that Court who decided he had no jurisdiction, basing his decision on the judgment of Abdul Razak J. in *Yanasengam* v. *Public Prosecutor.*[1]

The accused applied to the High Court for bail pending their trial fixed in March 1982. Counsel for the accused submitted in view of the amendment to the Penal Code, gang-robbery is no longer punishable with imprisonment for life, while the Deputy Public Prosecutor submitted otherwise.

Held: (1) after the amendment to section 395 of the Penal Code, gang-robbery is punishable with imprisonment for a term which may extend to twenty years, which expression cannot be said or construed to be imprisonment for life;

(2) the Sessions Court has the jurisdiction to hear and decide the application for bail in respect of an offence under section 395 of the Penal Code;

(3) in all cases (whether bailable or not) the High Court has the discretion to grant bail under sections 388 and 389 of the Criminal Procedure Code;

(4) the accused should be granted bail of $4,000 each on one surety.

[**Editorial Note:** We understand that this case is on reference to the Federal Court.]

Cases referred to:-

(1) *Yanasengam & Ors.* v. *Public Prosecutor* [1978] 1 M.L.J. 269.

(2) *Herron* v. *Rathmines & Rathgar Improvement Commissioners* [1892] A.C. 498, 501, 502.

(3) *Lumsden* v. *Inland Revenue Commissioners* [1914] A.C. 877, 924.

(4) *R.P. Kapur* v. *Pratap Singh Kairon* A.I.R. 1964 S.C. 295.

(5) *Sulaiman bin Kadir* v. *Public Prosecutor* [1976] 2 M.L.J. 37, 38.

(6) *Che Su binti Daud* v. *Public Prosecutor* [1978] 2 M.L.J. 162.

CRIMINAL APPLICATION.

K. Gunaretnam for the accused/applicant.

Balia Yusof (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wong Kim Fatt J.C.: This is an application for bail pending trial under section 388(i) of the Criminal Procedure Code by the five accused jointly charged with an offence of gang-robbery under section 395 of the Penal Code. The accused, the applicants in these proceedings, were arrested on October 26, 1981, and were eventually produced before the President, Sessions Court, Seremban, on November 11, 1981, when their application for bail was refused by the